

QUAPAW TRIBE OF OKLAHOMA



P.O. Box 765
Quapaw, OK 74363-0765

(918) 542-1853
FAX (918) 542-4694

June 14th, 2017
Ajit Pai, Chairman
Federal Communications Commission
445 12th Street, SW
Washington DC 20554

Re: Notice of Proposed Rulemaking (NPRM) and Notice of Inquiry (NOI) in the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment (WT 17-79) and Revising the Historic Preservation Review Process for Wireless Facility Deployments (WT 15-180).

Dear Chairman Pai:

The Quapaw Tribe has reviewed the Notice of Proposed Rulemaking (NPRM) and Notice of Inquiry (NOI) in the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment (WT 17-79) and Revising the Historic Preservation Review Process for Wireless Facility Deployments (WT 15-180).

The Quapaw Tribe would like to thank the FCC for the opportunity to comment and for the history of consultation between the Quapaw Tribe and your agency. The Quapaw Tribe understands the need for the deployment of new technologies such as 5G and small cells. The FCC's *2016 Broadband Progress Report* reported 41% of all tribal lands and 68% of rural tribal lands lack access to Broadband. Within the Quapaw Tribe's jurisdictional area there are many areas which continue to have poor coverage. The Quapaw Tribe would like to urge the FCC to prioritize Indian Country during the deployment of 5G coverage. Additionally small cells may be able to rectify slow wireless speeds.

The NPRM contains 264 proposed rules changes and comment requests. The sheer size of this proposal is staggering. Much of the language in the document is vague, and even contradictory. Furthermore, the language in the NPRM appears to be heavily driven by industry concerns and appears to have little concern for state, local and tribal governments.

With this in mind, tribal governments should be given more than 30 days to formulate proper responses to this document. Also, in accordance with Executive Order 13175 and the National Historic Preservation Act, (NHPA) [16 U.S.C. 470 §§ 470-470w-6] 1966, the FCC should consult with tribal nations in order to uphold fiduciary responsibilities. The Quapaw Tribe would like to request an extension to the 30 day comment period, and would like to request meaningful consultation with the FCC to discuss these issues.

The Quapaw Tribe is very concerned by the proposed policy changes contained in the NPRM. The Tower Control Notification System (TCNS) is an efficient system for FCC applicants to request assistance in identifying potential effects to historic properties. These policy changes have the potential to greatly harm the effectivity of this system. Additionally the NPRM includes vast proposed exemptions or exclusions to the review of federal undertakings. We do not believe they are being proposed in a manner which is compliant with NHPA and 36 CFR Part 800.

The Quapaw Tribe would also like to offer the following comments on the items contained in the NPRM:

Tribal Fees: the NPRM states that the FCC seeks comments on fees paid to tribal nations. As stated in the ACHP Memorandum, *Fees in the Section 106 Review Process*, when an agency or applicant seeks “specific information regarding the location, nature, and condition” of sites, the tribal nation is fulfilling “the role of a consultant or contractor” and the tribe is justified in requiring payment for services.

During conversations with the FCC our tribe has been told that some tribal nations are charging extremely high fees and that industry complaints about this are one of the primary causes for this discussion. The Quapaw Tribe urges the FCC to work with individual tribal nations who may be accused of this on a government-to-government level.

If there is discussion about tribal fees beyond issues with specific tribes, policy should be changed only after meaningful consultation. Additionally, policy changes should not set harmful precedents and should be in keeping with the fiduciary responsibilities of the federal government.

Batching: the Quapaw Tribe understands that there will be a rise in the number of review requests corresponding to the deployment of 5G and the rise in small cells. We also understand that the need to effectively roll out this technology has sparked discussions of how to handle the increased volume of undertakings, which due to physical size have a smaller area of potential effect. The commission seeks comments on what lessons were learned through PTC Batching and how to potentially batch in an effective manner to aid in accelerating the deployment of broadband.

In our experience the batching which occurred with PTC was poorly executed and did not make our review of PTC poles more efficient *whatsoever*. The review of batched projects typically takes the same amount of time as it would to submit them individually (if not longer), because each site must still be reviewed for potential effects, and often times the proposed poles are not even in proximity to each other, and some submissions have even

been in different counties altogether. In short, PTC batching was entirely ineffective and the applicants would have been *immeasurably* better off if they had simply followed the established procedure, both initially and after the ACHP's Program Comment on PTC Wayside Poles and Infrastructure.

Despite the lack of significant benefit, if the FCC proposes to batch small cell submission the Quapaw Tribe strongly urges the FCC to curb industry attempts to batch sites that are not in close proximity to each other. If two sites are batched together and are not in close proximity it does not reduce the amount of tribal review work which is conducted, but it can create confusion and potentially even slow the review process.

Additionally, in our experience applicants have provided site documents and information for batches that can be confusing. Sometimes applicants may not clearly state that a project is batched in the submitted documents. This means while reviewing the documents in detail we have to sort out which maps and documents are for which pole, which slows the review.

We recommend that if batched submissions are utilized in the future they should be clearly differentiated from non-batched submissions and each item in the batch should have a unique identifier. An example would be submissions being labeled something like "TCNS Batch Submission 555555" and each small cell in the batch being identified, for example "TCNS 555555.1". Some applicants already follow a similar method; however it is not consistent among applicants, and identified in the TCNS system. Also the unique identifier may vary, some applicants use a letter or a number and some applicants use a unique identifier such as referring to a mile marker. A standardized unique identifier in the TCNS system and on all correspondence would aid in our ability to effectively and efficiently review a submission.

If the FCC would like to pursue batching as a potential method to accelerate the deployment of broadband, meaningful consultation should occur to address tribal concerns and incorporate the insights of individuals who actually review these submissions.

Geographic Areas of Interest: The NPRM requested comments on multiple issues regarding areas of interest. Two which stand out are: should tribe be forced to re-enter their area of interest on a county-by-county basis (rather than being able to enter an entire state), and if tribal areas should be subject to certification.

Altering the TCNS system to require a county-by-county entry of our area of interest would not change our area of interest. It would simply waste tribal and federal resources. Our staff would have to spend the time it would take to re-enter our entire area of interest (instead of performing reviews), and FCC staff would have to take the time to edit the TCNS programming, and remove the existing tribal areas.

Also, to our knowledge there is no precedence for an agency to demand certification of a tribe's area of interest. Our tribal area of interest is the result of careful research and is based on historical research, archeological research and oral history. Developing a method to "certify" would have to be so broad and inclusive that we are not sure how it could be of any use beyond creating unnecessary work for tribal and FCC staff. Additionally certifying or justifying our area of interest would potentially include providing confidential information about sites. This is unwarranted and we are not legally bound to do so.

NHPA Exclusions: the NPRM seeks comment on excluding a number of undertakings from review. These include pole replacements, right of way and collocations.

- Pole replacements should not be excluded from review. If the applicant provided sufficient information about a pole replacement it would be reviewed in a timely manner under the existing system. Excluding pole replacements from review entirely does not take into account that some poles were placed without review, and therefore may have impacted a site and replacing the pole would simply add to the impact. Additionally a taller pole could potential create an adverse effect in the form of impacting a view shed for a sacred site, some of which are even in urban areas.
- Right of ways should not be excluded from review. A transportation corridor such as a trail, path or road can in and of itself be a historic property. Additionally many modern transportation corridors are still in the same path as historic corridors, some having pre-Columbian origins. The Quapaw Tribe and the Arkansas SHPO worked with an applicant who installed a PTC pole *within their right of way* that adversely affected a sacred mound site. This is a perfect example of why right of ways should not be excluded from review.
- Collocations also have the potential to affect an historic property. In the example above a sacred site has been impacted by a development and has poles in and near it. Adding to the cumulative adverse effect by installing more and more hardware is not an advisable course of action as it will simply exacerbate the adverse effect.

36 CFR Part 800 §14(C) describes the establishment of exemptions; the process for which consultation with the ACHP, SHPOs and THPOs shall take place is described in detail. 36 CFR Part 800 §14(C)(3) states the proponent of the exemption shall consider the views of SHPOs and THPOs. 36 CFR Part 800 §14(C)(3), E(3), and (F) describe consultation with tribes. The Quapaw Tribe does not believe that these views have been adequately considered, or that meaningful consultation has occurred. FCC representatives have themselves stated on conference calls and in meetings that this process is being driven by industry complaints.

Self-Certification: the NPRM proposes and requests comment on applicants being able to "self-certify" their compliance with Section 106 without directly requiring FCC involvement, in a manner similar to the proposed "deemed granted" remedy for local governments. The Quapaw Tribe strongly urges the FCC not to pursue this proposal.

The proposed "Self-Certification" of applicant compliance with Section 106 is fundamentally flawed and is not compliant with federal law. 36 CFR Part 800 §2(A)(3) states that an agency may use the services of applicants, however the agency remains "legally responsible for all findings and determinations".

In conclusion the Quapaw Tribe urges the Federal Communications Commission not to proceed with this Notice of Proposed Rulemaking. The Quapaw Tribe requests face-to-face consultation to discuss the many issues presented in the NRPM. The Quapaw Tribe also requests guidance from the Advisory Council on Historic Preservation. The Quapaw Tribe looks forward to government-to-government consultation with the Commission on these important topics.

Sincerely,



John L. Berrey

Chairman, Quapaw Tribe

CC: NATHPO, ACHP